IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO. 1:07-cv-00231-LHT-DLH

C. BURGESS, Plaintiff, v. EFORCE MEDIA, INC.; IWIZARD HOLDING, INC.; ADKNOWLEDGE, INC.; BASEBALL EXPRESS, INC.; ALLEN-EDMONDS SHOE CORPORATION; INTERSEARCH GROUP, INC.; TRUSCO MANUFACTURING COMPANY; PRICEGRABBER.COM, INC.; SHOPZILLA, INC.; DAZADI, INC.; SIX THREE ZERO ENTERPRISES, LLC, Defendants.	))))))))))))))))))	**ANSWER OF DEFENDANT DAZADI, INC.**

NOW COMES Defendant Dazadi, Inc. ("Dazadi") by and through its undersigned counsel, and in answer to Plaintiff C. Burgess' Complaint states as follows:

I. FIRST DEFENSE

PARTIES

1. In response to paragraph 1 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

2. In response to paragraph 2 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

3. In response to paragraph 3 of the Complaint, Dazadi states that it is a California corporation with its principal place of business in California. Dazadi further states that it does business in North Carolina. Except as expressly admitted, Dazadi denies each and every other allegation contained in paragraph 3 of the Complaint.

Dockets.Justia.com

4. In response to paragraph 4 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

5. In response to paragraph 5 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

6. In response to paragraph 6 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

7. In response to paragraph 7 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

8. In response to paragraph 8 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

9. In response to paragraph 9 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

10. In response to paragraph 10 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

11. In response to paragraph 11 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

12. In response to paragraph 12 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

PLAINTIFF'S STATEMENT OF FACTS

13. In response to paragraph 13 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

14. In response to paragraph 14 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

15. In response to paragraph 15 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

16. In response to paragraph 16 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

17. In response to paragraph 17 of the Complaint, Dazadi states the statute speaks for itself, and this paragraph calls for a legal conclusion that is not subject to denial or admission.

18. In response to paragraph 18 of the Complaint, Dazadi denies each and every allegation contained therein.

PLAINTIFF'S "COUNT ONE AGAINST DEFENDANTS IWIZARD, EFORCE, BASEBALL AND ADKNOWLEDGE"

19. In response to paragraph 19 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

20. In response to paragraph 20 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

21. In response to paragraph 21 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

22. In response to paragraph 22 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

23. In response to paragraph 23 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

24. In response to paragraph 24 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

25. In response to paragraph 25 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

26. In response to paragraph 26 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

27. In response to paragraph 27 of the Complaint, Dazadi incorporates by reference its responses to paragraphs 1-26.

28. In response to paragraph 28 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

29. In response to paragraph 29 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

30. In response to paragraph 30 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, on that basis, denies each and every allegation contained therein.

31. In response to paragraph 31 of the Complaint, Dazadi incorporates by reference its responses to paragraphs 1-30.

32. In response to paragraph 32 of the Complaint, Dazadi states that Plaintiff's requested relief is not subject to denial or admission. Dazadi asks that Plaintiff recover nothing from Dazadi in this suit.

33. In response to paragraph 33 of the Complaint, Dazadi states that Plaintiff's requested relief is not subject to denial or admission. Dazadi asks that Plaintiff recover nothing from Dazadi in this suit.

34. In response to paragraph 34 of the Complaint, Dazadi states that Plaintiff's requested relief is not subject to denial or admission. Dazadi asks that Plaintiff recover nothing from Dazadi in this suit.

35. In response to paragraph 35 of the Complaint, Dazadi states that Plaintiff's requested relief is not subject to denial or admission. Dazadi asks that Plaintiff recover nothing from Dazadi in this suit.

36. In response to paragraph 36 of the Complaint, Dazadi states that Plaintiff's requested relief is not subject to denial or admission. Dazadi asks that Plaintiff recover nothing from Dazadi in this suit.

PLAINTIFF'S "COUNT TWO AGAINST DEFENDANTS ALLEN-EDMONDS SHOE CORPORATION, INTERSEARCH GROUP, INC., TRUSCO MANUFACTURING COMPANY, PRICEGRABBER.COM, INC., SHOPZILLA, INC., DAZADI, INC., SIX THREE ZERO ENTERPRISES, LLC"

37. In response to paragraph 37 of the Complaint, Dazadi incorporates its responses to paragraphs 1-36.

38. In response to paragraph 38 of the Complaint, Dazadi denies all allegations contained within paragraph 38 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to other defendants and, on that basis, denies each and every remaining allegation contained therein.

39. In response to paragraph 39 of the Complaint, Dazadi denies all allegations contained within paragraph 39 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to other defendants and, on that basis, denies generally and specifically, each and every remaining allegation contained therein.

40. In response to paragraph 40 of the Complaint, Dazadi denies all allegations contained within paragraph 40 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies each and every remaining allegation contained therein.

41. In response to paragraph 41 of the Complaint, Dazadi denies all allegations contained within paragraph 41 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies each and every remaining allegation contained therein.

42. In response to paragraph 42 of the Complaint, Dazadi denies all allegations contained within paragraph 42 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to other defendants and, on that basis, denies generally and specifically, each and every remaining allegation contained therein.

43. In response to paragraph 43 of the Complaint, Dazadi denies, all allegations contained within paragraph 43 as they relate to Dazadi. Dazadi specifically denies that Plaintiff has suffered any damages caused by Dazadi.

PLAINTIFF'S STATEMENT OF CLAIM

44. In response to paragraph 44 of the Complaint, Dazadi incorporates its responses to paragraphs 1-43.

45. In response to paragraph 45 of the Complaint, Dazadi denies all allegations contained in paragraph 45 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, on that basis, denies each and every remaining allegation contained therein.

46. In response to paragraph 46 of the Complaint, Dazadi denies all allegations contained in paragraph 46 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, on that basis, denies each and every remaining allegation contained therein.

47. In response to paragraph 47 of the Complaint, Dazadi denies all allegations contained in paragraph 47 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, on that basis, denies each and every remaining allegation contained therein.

48. In response to paragraph 48 of the Complaint, Dazadi denies all allegations contained in paragraph 48 as they relate to Dazadi. Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, on that basis, denies generally and specifically, each and every remaining allegation contained therein.

49. In response to paragraph 49 of the Complaint, Dazadi is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, on that basis, denies each and every remaining allegation contained therein.

PLAINTIFF'S "RELIEF DEMANDED"

50. In response to paragraph 50 of the Complaint, Dazadi incorporates its responses to paragraphs 1-49.

51. In response to paragraph 51 of the Complaint, Dazadi denies that Plaintiff is entitled to the requested relief from Dazadi.

52. In response to paragraph 52 of the Complaint, Dazadi denies that Plaintiff is entitled to the requested relief from Dazadi.

53. In response to paragraph 53 of the Complaint, Dazadi denies that Plaintiff is entitled to the requested relief from Dazadi.

54. In response to paragraph 54 of the Complaint, Dazadi admits that Plaintiff demands a jury trial.

55. In response to paragraph 55 of the Complaint, Dazadi denies that Plaintiff is entitled to the requested relief from Dazadi.

56. In response to paragraph 56 of the Complaint, Dazadi denies that Plaintiff is entitled to any relief from Dazadi.

II. AFFIRMATIVE DEFENSES

FIRST DEFENSE
(Failure to State a Claim)

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Dazadi and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or any other relief whatsoever from Dazadi.

SECOND DEFENSE
(Preemption)

Plaintiff's claims are barred to the extent they conflict with federal statutes that pre-empt causes of action under state law.

THIRD DEFENSE
(Indemnification)

Dazadi is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the result of the acts or omissions of third persons over whom Dazadi had neither control nor responsibility.

FOURTH DEFENSE
(Failure to Mitigate Damages)

Plaintiff has failed to mitigate his damages.

FIFTH DEFENSE
(Laches)

The Complaint and each claim for relief therein is barred by laches.

SIXTH DEFENSE
(Contributory Negligence)

Dazadi is informed and believes and thereon alleges that any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and/or third parties and resulted from Plaintiff's or third parties' own negligence which equaled or exceeded any alleged negligence or wrongdoing by Dazadi.

SEVENTH DEFENSE
(Estoppel)

Any damages which Plaintiff may have suffered, which Dazadi continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

EIGHTH DEFENSE
(Consent)

Dazadi alleges upon information and belief that Plaintiff consented to and/or authorized any alleged trespass by Dazadi.

NINTH DEFENSE
(Statute of Limitations)

Dazadi is informed and believes and thereon alleges that all claims for relief in the Complaint herein are barred by the statute of limitations.

TENTH DEFENSE
(Improper Request for Punitive Damages)

Plaintiffs' Complaint does not allege facts sufficient to rise to the level of conduct required to recover punitive damages, and thus all requests for punitive damages are improper.

ELEVENTH DEFENSE
(Unclean Hands)

The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

TWELFTH DEFENSE
(Independent Intervening Cause)

Dazadi alleges upon information and belief that if Plaintiff sustained any of the injuries alleged in the Complaint, there was an intervening, superseding cause and/or causes leading to such alleged injuries and, as such, any action on the part of Dazadi was not a proximate cause of the alleged injuries.

III. PRAYER FOR RELIEF

WHEREFORE, Defendant Dazadi, Inc. prays as follows:

1. That Plaintiff takes nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;

2. For costs of suit herein incurred; and

3. For such other and further relief as the Court may deem just and proper.

McGUIRE, WOOD & BISSETTE, P.A.

By: /s/ Mary E. Euler
Mary E. Euler
State Bar No. 25799
Attorneys for Defendant Dazadi, Inc.
Post Office Box 3180
Asheville, NC 28802-3180
Telephone: (828) 254-8800
Facsimile: (828) 259-9623

ND: 4817-4463-3857, v. 1

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed a copy of the foregoing Defendant Dazadi, Inc.'s Answer to the Complaint with the Clerk of Court using the ECF system that will send notification thereof to the following:

Kenneth R. Raynor	ken@templetonraynor.com
Keith H. Johnson	kjohnson@poynerspruill.com
Judy Thompson	jthompson@poynerspruill.com
Deborah T. Crowder	dcrowder@poynerspruill.com
Brian Heslin	brianheslin@mvalaw.com
Jennifer F. Revelle	jrevelle@rbh.com
Jacqueline D. Grant	jgrant@roberts-stevens.com

I further certify that I have served a copy of the foregoing Defendant Dazadi Inc.'s Answer to the Complaint on the Plaintiff by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to:

C. Burgess
PO Box 6355
Hendersonville, NC 28793

This the 20th day of July, 2007.

McGUIRE, WOOD & BISSETTE, P.A.

By: /s/ Mary E. Euler

Mary E. Euler
State Bar No. 25799
Attorneys for Defendant Dazadi, Inc.
Post Office Box 3180
Asheville, NC 28802-3180
Telephone: (828) 254-8800
Facsimile: (828) 253-7200

ND: 4813-9466-6753, v. 1